(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO.676/2003

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. M.M. Rao, Advocate for the respondents.

CORAM : N.N. MHATRE, J.

DATE : FEBRUARY 26, 2004.

P.C.:

By this petition, the petitioners impugn the Order of the trial Court refusing their application dated 19.1.2002 praying that the Commissioner appointed be directed to demarcate the property known as "Codco". According to the petitioners, the initial application was made by them for demarcation of the property on 10.7.2001, by which the petitioners i.e. the plaintiffs before the trial court sought demarcation of the suit property described as "Codco". By the second

prayer in the application, the petitioners had also prayed that the suit property known as "Gardirichem Bhat" be also demarcated. A similar application was made by the respondents herein, setting out the terms of reference for the Commissioner. Clause (c) of the terms of reference indicated that the respondents also had in mind that the property known as "Codco" should be demarcated. The parties had also made a joint application on 31.8.2001. This application contained the names of the suit property known as "Gordirichem Bhat" for being demarcated. The Commissioner was accordingly appointed who submitted his report dated 12.2.2002. He surveyed and demarcated the only property "Gardirichem Bhat". The Commissioner was of the view that since the application dated 31.8.2001 contained the name of only this property, he could not demarcate the property known as

"Codco". The petitioners, therefore, filed a review application dated 19.1.2002, which has been disallowed by the trial Court.

2. Heard Advocates.

3. There is obviously an inadvertent error which has crept in when the joint application was made on 31.8.2001; because of which the property known as "Codco" has been omitted. In the earlier applications made by both parties, individually, the suit property "Codco" was also sought to be demarcated. In any event, no prejudice would be caused to the respondents if this property is also demarcated.

4.The order of the trial Court is set aside. The Commissioner who had carried out the earlier demarcation with respect to the property "Garderichem Bhat", shall

demarcate the property known as "Codco". The petitioners will pay the usual charges of the Commissioner. The demarcation will be carried out and the report shall be submitted before the trial Court within six weeks from today. Petition disposed of accordingly.

NISHITA MHATRE, J.

ssm.